***THE HON'BLE SRI JUSTICE ELIPE DHARMA RAO**

–

+ WP NO. 15581 OF 2005

AND

WPMP NO. 23801 OF 2005

%Dated 17.10.2005

Mala Pentamma and 4 others

–

Petitioners

VERSUS

$ The Nizamabad Municipality, Rep. by its
Commissioner, Nizamabad, Nizamabad District
and 2 others

Respondents

!Counsel for appellant: Mr. Jalli Kanakaiah, Advocate,

^Counsel for Respondent: Mr. Polisetti Radhakrishna,
SC for Municipalities for R-1
G.P. for Revenue for R-2 and R-3

<GIST:

> HEAD NOTE:

? Cases referred

1. AIR 1996 S.C. 112
2. (1990) 2 SCJ 10
3. AIR 1997 S.C. 3297

-

-

-

-

-

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HONOURBALE SRI JUSTICE ELIPE DHARMA RAO

W.P. No. 15581 OF 2005

AND

WPMP No. 23801 OF 2005

Dated : OCTOBER 17, 2005

Between:

Mala Pentamma and four others

Petitioners

AND

The Nizamabad Municipality, Rep. by its
Commissioner, Nizamabad, Nizamabad District
and two others.

Respondents

THE HONOURBALE SRI JUSTICE ELIPE DHARMA RAO

–

W.P. No. 15581 OF 2005

AND

WPMP No. 23801 OF 2005

–

COMMON ORDER:

The petitioners, five in number, belonging to Scheduled Tribe, filed the above petition praying to issue a writ of mandamus declaring the action of the respondents in threatening to demolish their houses bearing Door Nos.s 7-13-1224, 7-11-505, 7-11-321, 7-13-28 and 7-11-319 respectively, situated in Yerukalawada, Ashok Nagar, Bodhan Road, Nizamabad, without following due process of law, as

illegal, arbitrary and violative of principles of natural justice and violative of Article 300-A of the Constitution.

The deponent to the affidavit – 4th petitioner states that all the petitioners belong to Scheduled Tribe and since they had no house sites, the third respondent after following due process of law and subject to their eligibility, granted patta of the house sites in respect of Plot Nos. 441, 449, 447 and 448 each measuring 44, 66, 98, 99 and 66 Sq. Yards, respectively, vide proceedings bearing No.B4/3670/93 dated 2.6.1994 and they have raised pucca houses in their plots which were allotted the above door Nos. by the first respondent and they have been residing in the said houses with families paying property tax, for the last ten years. It is further stated that they were allotted power connections. It is further stated that they have left over 5' in front of their houses for the purpose of laying drainage pipeline and it was laid and is in existence.

It is stated that on 14.7.2005, the subordinates of first respondent Municipality went to the petitioners' houses and attempted to demolish the rear portion of their respective houses under the guise of laying another drainage pipelines has to laid on another side of the petitioners' houses without any notice, but on resistance by the petitioners, they left stating that they will come back for demolition. Thus filed the present writ petition.

When this writ petition was listed for admission, on 18.7.2005, this court, while directing the learned Govt. Pleader for Revenue to verify the allegations of the petitioners, directed the respondents therein to produce copy of the Master Plan and till such time the respondents were directed not to interfere with the petitioners' portion of houses and the matter stood adjourned to 25.7.2005, on which date it is represented by the learned counsel for the petitioners that part of the houses of the petitioners were demolished by the officials of the respondent – Corporation, supporting which some photographs were filed. This allegation of the petitioners were controverted by the learned Standing Counsel for the respondents. Thus Ms.

A.Vijayalakshm, Advocate, came to be appointed as an Advocate – Commissioner to verify the true facts, conduct an enquiry after giving notice to both the parties, and to submit her report within two weeks.

In the meanwhile, the first respondent Corporation filed its counter admitting the averment that the petitioners belong to Schedule Tribe and that they were allotted the land as stated by the petitioners, but stated that in front of the same, there is D-54 canal and on the back there is a storm water drain. It is also stated that the 5th petitioner is not the original pattedar and he being Govt. employee, is not entitled to patta. The averment of the petitioners that they left over 5' open space in front of their houses and that the officials of the respondents threatened to demolish portion of their houses on 14.7.2005 is denied. It is averred that for half a century, both D-54 canal and the storm water are in existence in between the bund and the petitioners have encroached into the storm water drain and filled it up and erected temporary structures with a mala fide intention to grab the drain land also. It is submitted that the 2nd petitioner is in unauthorized occupation of 27 Sq. Yards; the 4th petitioner is in unauthorized occupation of 34 Sq.Yards, and the 5th petitioner is in unauthorized occupation of 34 Sq.Yards over and above the area allotted to them. It is further stated that had there been any drain, as submitted by the petitioners, there would not have been a necessity for the respondents to la down a second drain, hence denied the existence of a drain. Above all, it is submitted that the respondents are not duty bound to issue notice as contemplated under the Act as they have not demolished any structure in their patta land. It is also submitted that the corporation has taken up the construction of pucca drain spending nearly Rs.60.00 lakhs to a length of about 1500 feet to drain out the storm water, in the interest of general public and not with an intention to deprive the valuable property of the petitioners, as alleged and, therefore, prayed to dismiss the writ petition.

The Advocate Commissioner also filed her report stating that there is a drainage line coming from North to South and the drain water flows

from South to North. The northern side is low lying area. It is further stated that on the date of inspection, the drain water was flowing from north and taking turn towards western side, adjacent to the house belonging to a journalist and on observation, the respondent Corporation proposed to lay down a 4 feet drainage canal straight towards northern side for the prupose of diverting the drainage water from west to north and in that connection, the Corporation has demolished the house of first petitioner and the houses of the petitioners 2 to 4 were affected at basement level while the rear portion of the house of 5th petitioner was demolished. She also stated that the Commissioner of the first respondent stated that as per the Master Plan, there is a drainage canal for the purpose of drain water, but the petitioners have gradually encroached beyond the pattas issued to them and a as a result, the entire old canal was filled up, which the petitioners denied. The proposed digging of the drainage canal is under the pressure of journalist and local leaders. Ultimately she concludes as under:

> *"…on perusal of the physical features as existing at the time of my personal inspection, the house of the 1st writ petition was demolished in toto and houses of the writ petitions 2 to 4 are partially affected at the basement level and rare side wall of the 5th writ petitioner house was demolished partially…"*

Now the petitioners filed WP MP No. 23801 of 2005 praying to direct the respondents to pay Rs.60,000/- to the first petitioner, Rs.20,000/- each to the petitioners 2 to 4 and Rs.5,000/- to the 5th petitioner, towards the loss incurred by the petitioners in demolishing their houses. This petition is vehemently opposed by the respondents contending that the respondent Corporation proposed to deepen and widen the existing municipal drain, but the Advocate Commissioner, without any basis and record, based on the oral statements made by the petitioners, has submitted the report that the Corporation has demolished the houses of the petitioners, which is not true. The Corporation has also submitted its objections to the report of the learned Advocate – Commissioner. It is further emphasized that the corporation is not liable to pay any damage, inasmuch as the

petitioners are encroachers.

The allotment of site to the petitioners is not in dispute and construction of houses by them is also admitted, though the first respondent alleged that petitioners 2,4 and 5 have encroached into the drainage land. It is not the case of the respondent Corporation that all the petitioners have constructed their houses in the encroached portion of the land. It is a settled position of law that even for removal of encroachment, the encroachers are entitled to notice and without following due process of law, as contemplated under the provisions of A.P. Land Encroachment Act, they cannot be evicted. Therefore, the contention of the respondent Corporation that they are not duty bound to issue notice to the petitioner, does not hold water and shows their high handed behaviour.

Be that is so, on 18.7.2005, this court has specifically directed the respondents not to interfere with the petitioners portion of houses. Inspite of this order, the respondent in utter violation have demolished the house of the first petitioner and the houses of the petitioners 2 to 5 are partially effected. Therefore, the first respondent, besides committing contempt of the court, has damaged and caused loss to the petitioners. The photographs filed, prima facie, shows the damage caused to the houses of the petitioners.

It is not in dispute that the respondents have taken up the cause for general public, but that by itself does not authorize the first respondent to deprive the petitioners of their shelter. Right to shelter, is a fundamental right, traceable to Article 21 of the Constitution of India and any action infringing of such a right, is amenable to writ jurisdiction under Article 226 of the Constitution of India. The Apex Court in a decision *Abubakar Abdul Inamdar (dead) by L.Rs. and others Vs. Harun Abdul Inamdar and others ()* has held that right to shelter is a fundamental right, which springs from the right to residence assured in Article 19(1)(e) and right to life under Article 21 of the Constitution.

It is admitted case of the respondents that the petitioners herein belong to Scheduled Tribes and they were allotted sites in which they constructed the houses. In such circumstances, it becomes all the more necessary for the Government or its Local Bodies to preserve the interests of the Scheduled Castes, Scheduled Tribes and other Weaker Sections. A passing reference can be had to Article 46 of the Constitution of India, which mandates that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. It is not out of place to mention here that the first respondent has resorted to follow this Article more by way of breach, for the reasons hereinbefore stated.

The Apex Court, in a decision *Messers Shantiswtar Builders Vs. Narayan Khimalal Totame and others ()* while interpreting the term *Weaker Sections of Society* appearing in Sec. 20 and 21 of Urban Land (Ceiling and Regulation Act, 1976, has commanded to the Central Government to prescribe appropriate guidelines laying down true scope of the term. Para 13 of the judgments reads:

> *"…In recent years on account of erosion of the value of the rupee, rampant prevalence of black money and dearth of urban land, the value of such land has gone up sky-high. It has become impossible for any member of the weaker sections to have residential accommodation anywhere and much less in urban areas. Since a reasonable residence is an indispensable necessity for fulfilling the Constitutional goal in the matter of development of man and should be taken as included in "life" in Article 21, greater social control is called for and exemptions granted under Sec. 20 and 21 of the Urban Land (Ceiling and Regulation) Act, 1976 should have to be appropriately monitored to have the fullest benefit of the beneficial legislation. The Supreme Court, therefore, commended to the Central Government to prescribe appropriate guidelines laying down the true scope of the term weaker sections of the society so that everyone charged with administering the statute would find it convenient to implement the same…."*

As stated earlier, right to shelter is a fundamental right, which springs

from the right to residence assured in Article 19(1)(e) and right to life under Article 21,a fundamental right which is an inalienable human right. The Apex Court in a decision *Samatha Vs,.State of Andhra Pradesh ()* held that right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and that opportunities and facilities should be provided to the children to develop in a healthy manner and in conditions of freedom and dignity. It is further observed that adequate facilities, just and human conditions of work, etc. are the minimum requirements which must exist in order to enable a person to live with human dignity and the State has to take every action. That apart, right to life includes the right to enjoyment of pollution free water and air for full enjoyment of life. Right to life enshrined in Article 21 means something more than mere survival of animal existence. The right to live with human dignity with minimum sustenance and shelter and all those rights and aspects of life which would go to make a man's life complete and worth living would form part of the right to life. Right to health and social justice was held to be fundamental right to workers. It is further observed by the Apex Court that the tribals, have fundamental right to social and economic empowerment. As a part of right to development to enjoy full freedom, democracy offered to them through the States regulated power of good Government that the lands in scheduled areas are preserved for social economic empowerment of the tribals.

In the backdrop of these principles, it is most unfortunate that the first respondent, the Commissioner of Municipal Corporation of Nizamabad without even causing notice, has demolished the dwelling houses of the petitioners read with Directive Principles of State Policy, in utter violation of Article 19(1)(e) and 21 of the Constitution and principles of natural justice. Therefore, this court, initially thought of moving Contempt of Court proceedings against the first respondent, but since there is neither any such request from the petitioners nor does it serve the purpose of petitioners, therefore, thought of proceeding with the WPMP No.23801 of 2005. If demolition of the houses of the petitioners was so necessitated for

public purpose, as contended, the respondents ought to have pressed legal remedies into force, by issuing notice to the petitioners to surrender the land, offering alternative suitable site or by offering to compensate them for the property, instead of highhandedly resorting to demolish the same, which they must have constructed with their hard earned money. Therefore, the act of the first respondent without providing compensation resorting to damage the houses of the weaker section, under the guise of public purpose, is definitely unconstitutional. Therefore, for such highhanded activities of the respondents, the petitioners are entitled to damages.

The petitioners in WP MP No. 23801 of 2005 have given details of the portions which were demolished and estimate the damage in terms of money, as Rs.60,000/- for the first petitioner and Rs.20,000/- each to the petitioners 2 to 4 and Rs.5,000/- to the 5th petitioner. This magnitude of the damage also corroborated by the report of the learned Advocate Commissioner. Therefore, neither the objections filed to report of learned Advocate Commissioner nor the contention of the learned Standing Counsel for the first respondent that the claim is too exorbitant, can be sustained. That apart, there is no rebuttal evidence on behalf of the first respondent, either to reject the claim of compensation or reduce the same. Therefore, I am inclined to allow the WP MP No.23801 of 2005, as prayed for, directing the respondent No.1 to pay damages at the rate of Rs.60,000/- to the first petitioner, Rs.20,000/- each to the petitioners 2 to 4 and Rs.5,000/- to the 5th petitioner, within a period of six weeks from the date of receipt of a copy of this order.

Consequently, the Writ Petition is disposed of with the above direction in WP MP No. 23801 of 2005, which is accordingly allowed. No order as to costs both in WP MP and writ petition.

Initially, the fee of the learned Advocate Commissioner was fixed at Rs.2,500/- to be paid by the first respondent – Municipality. Along with the report, the learned Advocate – Commissioner has filed an affidavit to enhance the fee by further Rs.5,000/-, in view of the

expenses she has incurred in making to and fro journey to Nizamabad and in physically inspecting the houses of the petitioners, etc. Having regard to the facts and circumstances of the case and the submissions made by her, her fee is enhanced by further Rs.2,500/- (in all Rs.5,000/-), to be paid by the petitioners within two weeks from today.

Elipe Dharma Rao, J.

October 17, 2005

MAS